IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

WP(C).No. 1094 of 2007(E)

CMA.12/2006 of SUB COURT, CHERTHALA

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PETITIONER:

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1. JANAKIYA SAMARA SAMITHI, THURAVOOR,
   REP.BY RAKSHADHIKARI P.N.BABU,S/O.NARAYANAN,
   AGED 33,PAZHAMPANAVELI,PERUMBALAM VILLAGE,
   CHERTHALA TALUK,PRESENTLY RESIDING AT CHERAYIL
   KODAMTHURUTHU PANCHAYAT, WARD NO.VII,
   KUTHIYATHODE P.O., CHERTHALA TALUK.

2. COMMITTEE MEMBER,
   VALSALA, W/O. VALSALAN, AGED 47, KODUVELI,
   THURAVOOR SOUTH VILLAGE, VALAMANGALAM MURI,
   CHERTHALA TALUK.

3. COMMITTEE MEMBER,
   GIRIJA, W/O. VIJAYAN, AGED 40, KALARICKAL,
   -DO- VILLAGE, -DO- MURI.

4. MEMBER,
   THRESIAMMA JOSEPH ALIAS THEYYAMMA, W/O. JOSEPH,
   AGED 43, THAZHATHU VEEDU, -DO- VILLAGE,-DO- MURI.

BY ADV. DR.V.N.SANKARJEE

RESPONDENTS:

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1. DIVAKARAN, S/O. KUNJAN,
   LICENCEE, TODDY SHOP NO.28, THURAVOOR,
   KUTHIYATHODE RANGE, CHERTHALA TALUK,
   ALAPPUZHA DISTRICT.

2. ASSISTANT EXCISE COMMISSIONER,
   ALAPPUZHA, ALAPPUZHA DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.1094 OF 2007

DATED THIS THE 10th DAY OF JANUARY, 2007

JUDGMENT

Petitioners are plaintiffs in O.S.226/05 on the file of Addl. Munsiff Court, Cherthala. Respondents are defendants. In the suit, petitioners filed I.A.1064/05, an application under order XXXIX Rule 1 of Code of Civil Procedure seeking an order of prohibitory injunction restraining first respondent from running toddy shop contending that toddy shop is in a building standing within the prohibited distance from Mannathu Sreekrishnaswamy Temple and Paranderaswaram Siva Temple. An order of temporary injunction was granted by learned Munsiff under Ext.P4 order. First respondent challenged that order before Sub Court, Cherthala in C.M.A.12/06. When learned Sub Judge did not pass an order, in the application filed by appellant to stay the operation of Ext.P4 order, first respondent approached this Court by filing W.P.(c) 8410/06. Under Ext.P6 order, this Court directed Sub Judge to pass appropriate order without further delay. Under Ext.P6 order, learned Sub Judge granted an order of stay of operation of Ext.P4 order. That order was challenged before this Court in W.P.(c)14269/06. Under Ext.P7, this Court directed learned Sub Judge to dispose the appeal

maintaining Ext.P6 order. As per Ext.P8 order, learned Sub Judge finally allowed the appeal and vacated the order of temporary injunction granted by learned Munsiff. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned Counsel appearing for petitioners was heard.

3. Arguments of learned Counsel appearing for petitioners was that under Ext.P8 order, learned Sub Judge interfered with Ext.P4 order holding that state was not made a party and publication under Order I Rule 8 of Code of Civil Procedure was not effected and the licensing authority was impleaded as a defendant in the suit and plaintiffs have effected publication of the notice by affixure in the notice board and consequently a party appeared before the Court to get himself impleaded and in such circumstances, Ext.P8 order is to be quashed.

4. On hearing learned Counsel appearing for petitioner, I do not find any infirmity in Ext.P8 order warranting interference in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India.

5. The question whether the toddy shop is situate within the prohibited distance from the temples,as claimed by petitioners is to be decided in the suit on the evidence. Eventhough an order of temporary injunction was granted originally, after Ext.P6 order, there was no order in favour of plaintiffs.

In such circumstances, I do not find any reason to interfere with Ext.P8 order passed by learned Sub Judge exercising the discretion vested in him. Learned Munsiff is directed to dispose the suit as expeditiously as possible,untrammeled by any observation in Ext.P8. If trial steps are over, learned Munsiff to dispose the suit before closing of the Court for summer vacation.

M.SASIDHARAN NAMBIAR,JUDGE

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